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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **ALFREDO BAUTISTA QUIAMBAO**
13 **2371 Forrest Oaks Drive**
14 **Chula Vista, CA 91915**

15 **Registered Nurse License No. 477212**

16 Respondent.

Case No. **2013-717**

OAH No.

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about March 31, 1992, the Board of Registered Nursing issued Registered
23 Nurse License Number 477212 to Alfredo Bautista Quiambao, a.k.a. Alfredo Quiambao
24 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
25 the charges brought herein and will expire on October 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

7. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AUTHORITIES

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 10. Section 2761 of the Code states in relevant part:

7 The board may take disciplinary action against a certified or licensed nurse or deny an
8 application for a certificate or license for any of the following:

9 "(a) Unprofessional conduct, ...

10 "...

11 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
12 functions, and duties of a registered nurse, in which event the record of the conviction shall be
13 conclusive evidence thereof.

14 "..."

15 11. Section 2765 of the Code states:

16 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
17 charge substantially related to the qualifications, functions and duties of a registered nurse is
18 deemed to be a conviction within the meaning of this article. The board may order the license or
19 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
20 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
21 order granting probation is made suspending the imposition of sentence, irrespective of a
22 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
23 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
24 of guilty, or dismissing the accusation, information or indictment."

25 12. Section 11160, subdivision (d) of the Penal Code, states:

26 "For the purposes of this section, 'assaultive or abusive conduct' shall include any of the
27 following offenses:

28 "(1) Murder, in violation of Section 187.

- 1 “(2) Manslaughter, in violation of Section 192 or 192.5.
- 2 “(3) Mayhem, in violation of Section 203.
- 3 “(4) Aggravated mayhem, in violation of Section 205.
- 4 “(5) Torture, in violation of Section 206.
- 5 “(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation
- 6 of Section 220.
- 7 “(7) Administering controlled substances or anesthetic to aid in commission of a felony, in
- 8 violation of Section 222.
- 9 “(8) Battery, in violation of Section 242.
- 10 “(9) Sexual battery, in violation of Section 243.4.
- 11 “(10) Incest, in violation of Section 285.
- 12 “(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or
- 13 disfigure, in violation of Section 244.
- 14 “(12) Assault with a stun gun or taser, in violation of Section 244.5.
- 15 “(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means
- 16 likely to produce great bodily injury, in violation of Section 245.
- 17 “(14) Rape, in violation of Section 261.
- 18 “(15) Spousal rape, in violation of Section 262.
- 19 “(16) Procuring any female to have sex with another man, in violation of Section 266,
- 20 266a, 266b, or 266c.
- 21 “(17) Child abuse or endangerment, in violation of Section 273a or 273d.
- 22 “(18) Abuse of spouse or cohabitant, in violation of Section 273.5.
- 23 “(19) Sodomy, in violation of Section 286.
- 24 “(20) Lewd and lascivious acts with a child, in violation of Section 288.
- 25 “(21) Oral copulation, in violation of Section 288a.
- 26 “(22) Sexual penetration, in violation of Section 289.
- 27 “(23) Elder abuse, in violation of Section 368.
- 28 “(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.”

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REGULATIONS

13. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

14. California Code of Regulations, title 16, section 1445, states in relevant part:

". . . .

"(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

COSTS

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(August 21, 2012 Criminal Conviction – Felony Grand Theft)**

7 16. Respondent's license is subject to discipline under Code sections 490 and 2761,
8 subdivision (f), in that Respondent was convicted of crimes that are substantially related to the
9 qualifications, functions, and duties of a registered nurse, as follows:

10 a. On or about August 21, 2012, in the Superior Court, County of San Diego,
11 South County Division, in the case entitled *People of the State of California v. Alfredo*
12 *Quiambao, a.k.a. Alfredo Bautista Quiambao*, (Case No. CS257612), Respondent was convicted
13 by the Court on his plea of guilty to violating Penal Code section 487, subdivision (a), grand
14 theft, a felony.

15 b. The circumstances underlying the conviction were that on or about January 26,
16 2012, San Diego County Sheriff's deputies responded to a call for a welfare check on an elderly
17 man who appeared to be disoriented and confused at the Union Bank located in Imperial Beach.
18 Upon their arrival, the deputies spoke with Leroy S., an 80 year old man, who was sitting in a
19 wheelchair, and appeared to be in poor health. The deputies noted that Leroy S. was coughing
20 repeatedly. Leroy S. explained to the deputies that he was living in independent living facilities
21 at 585 Florence Street, in San Diego. This independent living facility is owned and operated by
22 Respondent. The deputies accompanied Leroy S. into the bank where, with the assistance from a
23 bank representative, they obtained a transaction statement for the period December 9, 2011 and
24 January 10, 2012. Leroy S. advised the deputies that he did not give anyone permission to make
25 purchases or withdraw any money from his account. Between December 27, 2011 and February
26 4, 2011, multiple unauthorized purchases and ATM withdrawals were made using Leroy S.'s
27 ATM/debit card, including:

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ATM/DEBIT CARD PURCHASES

DATE	LOCATION	AMOUNT
12/27/2011	7-11 Store, 1311 Palm Avenue, Imperial Beach	\$10.00
01/08/2012	76/Circle K, 12320 Willow Road, Lakeside	\$10.00
01/09/2012	Shell, San Diego	\$21.54

ATM WITHDRAWALS

01/05/2012	North Island Federal Credit Union, Imperial Beach	\$402.50
01/07/2012	Circle K/ATM, 481 Sweetwater Road, Spring Valley	\$202.50
01/07/2012	Chase Bank, 503 Telegraph Canyon, Chula Vista	\$203.00
01/08/2012	G&M Oil, 3602 El Cajon Blvd, San Diego	\$102.50
01/09/2012	Wells Fargo Bank, 2423 Plaza Blvd., National City	\$203.00
01/10/2012	North Island Federal Credit Union, Imperial Beach	\$22.50

Some of the fraudulent transactions were made while Leroy S. was still in the hospital. The Union Bank representative advised the deputies that Respondent had a power of attorney over Leroy S.'s bank account. The starting balance on the bank account on December 9, 2011 was \$14.90. Leroy S.'s SSI check totaling \$1,196.00 was direct deposited into his account on January 3, 2012, and the unauthorized purchases and withdrawals began on January 5, 2012. There were also nine (9) withdrawals of \$2.00 each that were made to Leroy S.'s account by Union Bank for ATM Network Inquiry Fees or ATM Network Withdrawal Fees. The unauthorized transactions and fees totaled \$1,195.54. During the investigation, the deputies obtained photographs from surveillance video cameras of Respondent using Leroy S.'s ATM card on January 5 and 10, 2012 at the North Island Credit Union, on January 7, 2012 at the Chase Bank, and on January 8, 2012 at the Wells Fargo Bank. Union Bank representatives also notified the deputies that on October 17, 2011, Respondent accompanied Leroy S. to the Union Bank branch in National City, and tried to have Leroy S. withdraw \$1,000.00 from Leroy S.'s account. Union Bank personnel denied the withdrawal because Leroy S. was "not lucid" at the time. Later on October 17, 2011, Respondent accompanied Leroy S. to a different Union Bank branch in Chula Vista where Respondent had himself designated as Power of Attorney over Leroy S.'s financial matters.

1 d. As a result of the conviction, Respondent was sentenced: to serve three years formal
2 probation; to serve 180 days in custody, with the custody stayed pending successful completion of
3 probation; to pay a fine of \$800.00; to pay a court operations assessment of \$40.00; to pay a
4 criminal conviction assessment of \$30.00; to pay a restitution fine of \$240.00; and to make
5 restitution to Leroy S. in the amount of \$1,358.49.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Exclusion Action by the Department of Social Services)**

8 17. Respondent is subject to disciplinary action under section 2761, subdivision (a), for
9 unprofessional conduct in that Respondent illegally operated, and/or aided and abetted the
10 operation of unlicensed facilities housing elderly residents in need of care and supervision. The
11 circumstances are as follows:

12 18. On or about October 11, 2011, in a matter before the Department of Social Services,
13 (CDSS Case No. 6511257401E), Respondent was charged with illegally operating, and/or aiding
14 and abetting the operation of unlicensed facilities housing elderly residents in need of care and
15 supervision, in violation of Health and Safety Code sections 1569.10, 1569.44, 1669.44, 1569.45,
16 and 1569.58, subdivision (a)(2), and California Code of Regulations, title 22, sections
17 87101(u)(2), and 87106(a). As factors in aggravation, Respondent was charged with having been
18 previously cited, on multiple occasions, for operating an unlicensed residential care facility for
19 the elderly. On November 13, 2012, the Department of Social Services and the City of National
20 City obtained a Superior Court Order against Respondent which included: (1) a \$45,500.00
21 judgment; and (2) a permanent injunction enjoining and restraining Respondent from directly or
22 indirectly allowing any property owned, operated or controlled by Respondent to be used as
23 anything other than a single family residence with no more than 2 unrelated persons residing on
24 the property, permitting any property located in National City to be used or occupied in any
25 manner that creates a public nuisance, and/or operating an unlicensed community care facility or
26 residential care facility for the elderly.

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PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 477212 issued to Alfredo Bautista Quiambao;

2. Ordering Alfredo Bautista Quiambao to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: MARCH 5, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2012703891